APPENDIX A

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UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

(18 CFR 2.75)

Before Commissioners: John N. Nassikas, Chairman;
Albert B. Brooke, Jr., Pinkney Walker,
and Rush Moody, Jr.

Optional Procedure for Certificating)
New Producer Sales of Natural Gas) Docket No. R-441

ORDER NO. 455

STATEMENT OF POLICY RELATING TO OPTIONAL PROCEDURE FOR CERTIFICATING NEW PRODUCER SALES OF NATURAL GAS

(Issued August 3, 1972)

1. Pursuant to the Administrative Procedure Act, 5 U.S.C. 551, *et seq.* (1967) (APA) and Sections 4,5,7,8,14,15, and 16 of the Natural Gas Act[1], the Commission issues rules fixing the terms and conditions of an optional procedure under which it will issue permanent certificates for, and will otherwise regulate sales of natural gas subject to the Commission's jurisdiction nationwide, including, but not limited to, the Southern

[1] 52 Stat. 822, 823, 824, 825, 828, 829, 830; 56 Stat. 83, 84; 61 Stat. 459; 76 Stat. 72; 15 U.S.C. 717c, 717d, 717f, 717g. 717m, 717o.

Louisiana, Permian Basin, Other Southwest, Hugoton-Anadarko, Texas Gulf Coast, Appalachian and Illinois Basins, Rocky Mountain areas, and all other areas. The rates embodied in certificates issued pursuant to the rules and amendments set forth herein will be firm rates, not subject to refund obligation, as will be more fully explained hereinafter.

2. As we state in the notice issued in this proceeding on April 6, 1972, (37 FR. 7345, 4/13/72), data available to the Commission indicates a worsening of the gap between natural gas demand and supply.

3. The recent report on "National Supply and Demand 1971-1990," prepared by the Federal Power Commission's Bureau of Natural Gas (BNG) shows the level of "unsatisfied demand" for gas increasing from 3.6 trillion cubic feet in 1975 to 9.5 trillion cubic feet in 1980, 13.7 trillion cubic feet in 1985 and 17.1 trillion cubic feet in 1990.[2] Additionally, it is estimated that between 1971 and 1990, the United States will require 186.4 trillion cubic feet more gas than will be available, even after making liberal allowances for pipeline imports, liquefied natural gas imports, coal gas, Alaskan gas and reformed gas.[3]

4. The Future Requirements Committee (FRC) estimates that the natural gas requirements for the United States will increase from about 28.2 trillion cubic feet in 1971 to 33.9 trillion cubic feet in 1975.[4] Based on information concerning presently contracted or reasonably assured supplies, the FRC estimates that the gap between the potential demand for gas

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[2] *National Gas Supply and Demand 1971-1990*, and Bureau of Natural Gas, Federal Power Commission, February 1972, p. 3.

[3] *Ibid.*, p.3.

[4] *Future Gas Requirements of the United States*, Future Requirements Committee, Vol. No. 4, October 1971, p. 3.

and the most likely available supply will increase from .9 trillion cubic feet in 1971 to 3.9 trillion cubic feet in 1975.[5]

5. The assurance of adequate supplies of natural gas can mitigate the damage being done to the nation's environment. Natural gas is the cleanest burning and least polluting of all the fossil fuels.

6. Any further aggravation of the gas supply problem also portends grave implications for the nation's economic objectives. Between 1947 and 1970, the nation increased its annual consumption of energy from 32.9 quadrillion Btu to 68.8 quadrillion Btu, with the share of the total being contributed by natural gas increasing from 13.8 percent in 1947 to 32.5 percent in 1970.[6] During this period, the nation's real output of goods and services more than doubled and its real income per capita increased by about one half. It is inescapable that the continued growth and productivity of the U.S. economy requires adequate and reliable supplies of energy, including adequate and reliable supplies of natural gas.

7. Moreover, our efforts to hold consumer costs to the lowest reasonable level can only be eroded if the nation is forced to rely more heavily on substitute or supplemental supplies of gas than would be required if our domestic natural gas resources were developed in a timely manner. New base load supplies of substitute or supplemental gas will be available to consumers only at costs significantly higher than the prices of currently available domestic wellhead supplies.[7] The price per Btu for many primary fuels is greater than the price per Btu for natural gas. This comparison is especially unfavorable to the

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[5] *Ibid.*, p.3.

[6] *Mineral Industry Surveys, Petroleum Statement Monthly*, Bureau of Mines, Department of Interior, December 1970, p. 37.

[7] See, e.g., *Distrigas Corp.*, Docket No. CP70-196, *et al.*, opinion Nos. 613 and 613A, issued March 9 and June 7, 1972, respectively, Columbia LNG Corp., *et al.*, Docket Nos. CP71-68, *et al.*, opinion No. 622, issued June 28, 1972.

alternative fossil fuels when the costs of storage, handling and pollution control are included. In summary, if our domestic natural gas resources are not developed in a timely manner and consumers of natural gas are forced to satisfy a commensurately larger portion of their energy requirements by using either substitute or supplemental gas supplies, *e.g.*, imported liquefied natural gas, propane, reformed hydrocarbons, gasified coal, imported natural gas, or other fossil fuels, the net effect is higher energy costs throughout the economy, with resulting inflationary pressures. Higher prices for domestic gas, if paid for new supplies, will result in a cheaper mix of energy supplies and thus represent a better alternative.

8. In view of these facts, we are unwilling to leave untested the producing capacity of the United States. Our responsibility to the consumers of natural gas, to assure reliable and adequate supplies at the lowest reasonable cost, impels us to that course of action best calculated to spur domestic exploration and development. To this end, we seek to provide two incentives to domestic production, both fully congruous with consumer protection. First, we will certificate sales of gas not previously deliverable to the interstate market at prices which are shown to be in the public interest. Second, to the extent possible, we will lessen rate uncertainty which has prevailed since the early 1960's.

9. Studies available to the Commission indicate that vast quantities of natural gas remain undeveloped in the United States. Estimates range from 1178 trillion cubic feet to 2100 trillion cubic feet. We seek accelerated development of that portion of this potential supply which is economically recoverable, for in development of domestic reserves lies the best assurance of reliable supplies at the lowest reasonable cost.

10. As will be stated more fully hereinafter, this policy statement and the optional procedures herein established are directed at supplies of gas not available to the interstate market prior to April 6, 1972. The rulemaking does not envisage nor authorize rate increases for gas already flowing in interstate commerce through wells drilled prior to April 6, 1972. As new supplies are found or reduced to a deliverable state for

dedication to the interstate consumer market, the optional procedures here set forth will become available, but because of the limited scope of this rulemaking, consumers will not pay higher rates except for new supplies, and then only to that extent that the contracting parties establish on the record that the price to be paid is required by the public interest.

11. While comments were received from various persons, groups, and associations, we take particular note of those of the Departments of Commerce and Interior and the Environmental Protection Agency. The Department of Commerce suggested certain amendments to the rule as noticed, which have been adopted here, and expressed support for the proposed rule-making to encourage gas exploration and development. The Department of the Interior likewise suggested certain modifications in the rule, many of which have been accomplished by our action here, and stated, "(t)he proposed rule-making order in Docket No. 441 is a strong step toward providing the necessary incentive that will stimulate exploration and development of new gas supplies. . . ." The Environmental Protection Agency concurred "in the FPC's efforts to try to improve the gas supply position through procedures which will allow for increased reliance on market incentives."

12. Ninety-three persons, groups, Commissions or associations filed comments or suggestions in response to the Notice of April 6, 1972.[8] A number of those responding to the notice raised a general question of the lawfulness of the rule as proposed. We shall discuss procedural issues first and then discuss *seriatim* the suggestions and comments applicable to the various provisions of the rules.

PROCEDURAL ISSUES

13. An understanding of the relationship between the optional certification procedure we adopt herein and area rates must be based on an appreciation of the interplay between the Section 7 certificate and Sections 4 and 5 rate provisions of the Natural Gas Act (Act). That relationship is particularly

[8] A list of said respondents is contained in the Appendix hereto.

important insofar as regulation of producers' sales of natural gas in interstate commerce is concerned.

14. Immediately following the issuance of the Supreme Court's decision in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672 (1954), holding that sales of natural gas by producers for resale in interstate commerce are subject to the Act, the Commission initiated producer regulation by issuing Order Nos. 174 (13 FPC 1194), 174-A (13 FPC 1255), and 174-B (13 FPC 1576), requiring independent producers to file applications for certificates of public convenience and necessity, pursuant to Section 7 of the Act, and to file their contracts, under which interstate sales were being made or were proposed to be initiated, as rate schedules pursuant to Section 4 of the Act.

15. The Commission attempted individual company cost-of-service rate regulation following the issuance of Orders 174, 174A and 174B. The resultant delays and uncertainty were of such magnitude that this system of producer rate regulation was clearly not in the public interest. Before this was fully recognized, contracts were filed in the *CATCO* case [*The Atlantic Refining Co.* v. *Public Service Commission of New York*, 360 U.S. 378 (1959)] providing for an initial price of 21.4 cents per Mcf.

16. Because of opposition to the increased initial price, the Commission first issued a certificate authorizing the sale upon the condition that the producers could charge no more than 17 cents per Mcf. Since the producers had not commenced delivery of gas, they exercised their prerogative under the Act and declined to accept a certificate conditioned to 17 cents. After rehearing, the Commission issued a certificate (17 FPC 880 (1957)) authorizing the sale at the proposed initial price of 21.4 cents per Mcf because the Commission believed it was important to make certain that the large volume of gas involved (approximately 1.3 trillion cubic feet) be obtained for the interstate market. Additionally, the Commission found that consumers would be protected because of the rate sections of the Act which would enable it to reduce the price prospectively if the 21.4-cent price should prove to be unjust and unreasonable after a hearing held under Section 5 of the Act.

17. The Commission's order was ultimately appealed by the New York Commission and Eastern distributor companies to the Supreme Court. The Supreme Court reversed the order, ruling that the Commission was under a duty to hold the line on prices under the certificate provisions of the Act pending the outcome of rate proceedings instituted under Sections 4 and 5 of the Act (*CATCO, supra*, 360 U.S. at 388-390). The Court pointed out that rate proceedings are normally quite time consuming and that the public should not have to pay the 21.4 cent rate while a just and reasonable rate was being determined.

18. A large number of Commission orders, which had granted certificates approving initial rates on the theory that the prices could ultimately be reduced after the completion of subsequent rate proceedings, were reversed by various United States courts of appeals.[9] After the courts' reversal of Commission orders, the Commission instituted a uniform program of conditioning producer prices in certificate proceedings so as to fix initial prices for new sales to the level of previously certificated sales. The courts consistently affirmed this rationale employed by the Commission,[10] which was a result of its refusal to consider the justness and reasonableness of the price at the time the certificate was issued.

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[9] *United Gas Improvement Co.* v. *F.P.C.*, 283 F.2d 817 (9th Cir. 1960), *cert. denied*, 365 U.S. 881; *United Gas Improvement Co.* v. *F.P.C.*, 287 F.2d 159 (10th Cir. 1961); *United Gas Improvement Co.* v. *F.P.C.*, 290 F.2d 147 (5th Cir. 1961), *cert. denied*, 366 U.S. 965; *United Gas Improvement Co.* v. *F.P.C.*, 290 F.2d 133 (5th Cir. 1961), *cert. denied*, 386 U.S. 823; *P.S.C. of New York* v. *F.P.C.*, 287 F.2d 146 (D.C. Cir. 1960), *cert. denied*, 365 U.S. 880.

[10] *Signal Oil Co.* v. *F.P.C.*, 238 F.2d 771 (3rd Cir. 1956), *cert. denied*, 353 U.S. 923; *P.S.C. of New York* v. *F.P.C.* 329 F.2d 242 (D.C. Cir. 1964), *cert. denied*, 377 U.S. 963, affirming "in-line" price determinations but requiring further consideration of refund conditions; *People of State of California* v. *F.P.C.*, 353 F.2d 16, (9th Cir. 1965); *F.P.C.* v. *Sunray DX Oil Co.*, 391 U.S. 9 (1968).

19. The Commission adhered to a separation of certificate and rate issues when it embarked on area rate regulation. Sales were certificated, but conditioned so that the just and reasonable rate to be charged was not established until final judicial review of the applicable area rate decision was completed.

20. After the Commission had issued its first area rate decision involving the Permian Basin area (opinion No. 468, *Area Rate Proceeding*, 34 FPC 158 (1965), *aff'd, Permian Basin Area Rate Cases*, 390 U.S. 747 (1968), efforts were made by producers to obtain initial prices, pursuant to Section 7, in excess of the just and reasonable rates fixed, pursuant to Section 4 and 5, in the area rate proceeding. The Commission held that area rates would be used to establish the level of the initial rate for new sales, and, therefore, that it would not hold a hearing under Section 7 to determine new "in-line" rates once just and reasonable rates had been established. The Commission's position was upheld in *Phillips Petroleum Co.* v. *F.P.C.*, 405 F.2d 6 (10th Cir. 1969), and *Hunt Oil Co.* v. *F.P.C.*, 424 F.2d 982 (5th Cir. 1970), even though the producers had contended that they should be permitted to introduce evidence showing that their 1968, 1969 and 1970 costs had increased so as to require a higher price than the rate level fixed on 1960 costs by the Commission in the *Permian Basin* area rate proceeding. The court said the producers were attempting in a Section 7 proceeding to make a collateral attack on the area rate proceeding, and that they should ask for a reopening of the area rate proceeding if the prices established therein were inadequate (424 F.2d at 98).

21. At the present time, the Commision has completed area rate hearings in all but the Rocky Mountain area[11] and has fixed just and reasonable rates for all the major producing areas

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[11] *Area Rates for the Rocky Mountain Area*, Docket No. R-425, "Notice Instituting Proposed Rulemaking and Order Prescribing Procedure", issued July 15, 1971.

in the lower 48 States.[12] Court review is pending as to all of the recent area rate opinions[13] except Order No. 411 involving the Appalachian and Illinois Basin areas.

22. Because our area rate orders remain under attack, at the present time a producer, even if he is willing to sell at the rates fixed in such opinions, does not know that those rates will be affirmed on appeal. Although in the *Sunray DX* case supra, 391 U.S. 9, the Supreme Court held that a producer cannot be required to refund below the permanently-certificated rate, the Supreme Court was not in that case ruling on the question of whether a certificated rate, based upon an area rate invalidated through court review, would necessarily be impregnable, and the certificates so indicate. Consequently, there is no assurance at the present time that a producer may not ultimately have to refund some of an initial rate based on a just and reasonable

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[12]In addition to the *Permian Basin* decision *supra*, the Commission has instituted a new *Permian Basin* proceeding (*Area Rate Proceeding (Permian Basin Area)*, Docket No. AR70-1, 45 FPC 192 (1971)) which is awaiting an Examiner's initial decision. In addition to the first *Southern Louisiana Area Rate Proceeding* (Opinion No. 546, *Area Rate Proceeding (Southern Louisiana Area)*, 40 FPC 530 (1968), *aff'd sub nom. Austral Oil Co. (Southern Louisiana Area Rate Cases)* v. *F.P.C.*, 428 F.2d 407 (5th Cir. 1970), *cert. denied*, 400 U.S. 950), the Commission has issued a second decision regarding the Southern Louisiana area (Opinion No. 598, *Area Rate Proceeding (Southern Louisiana Area)*, Docket Nos. AR61-2, et al., issued July 16, 1971). Area rate opinions have also been issued for four other important producing areas: Opinion No. 607, *Area Rate Proceeding* (other Southwest Area), Docket Nos. AR67-1, *et al.*, issued October 29, 1971; Opinion No. 595, *Area Rate Proceeding (Texas Gulf Coast Area)*, Docket Nos. AR64-2, *et al.*, issued May 6, 1971; Opinion No. 586, *Area Rate Proceeding (Hugoton-Anadarko Area)*, Docket Nos. AR64-1, *et al.*, issued September 18, 1970, 44 FPC 761; and Order No. 411, *Area Rates for the Appalachian and Illinois Basin Areas*, Docket No. R-371, issued October 2, 1970, 44 FPC 1112, and Order No. 411-A, issued October 30, 1970, 44 FPC 1334.

[13]Opinion No. 586 in Ninth Circuit No. 71-1036, Opinion No. 595 in CADC 71-1828; Opinion No. 598 in Fifth Circuit Nos. 71-2761; *et al.*; Opinion No. 607 in Fifth Circrcuit Nos. 72-1114, *et al.*

determination and upon which the producer relied when it dedicated a new gas supply to the interstate market. In short, after some 18 years of producer regulation, the producer does not know how much it can lawfully charge for sales of natural gas in interstate commerce nor how much it will get if it develops and sells new gas to the interstate market. The producer knows for sure only that once it sells in interstate commerce it cannot stop deliveries.

23. This uncertainty has impeded domestic exploration and development. We acknowledge that Section 5 of the Natural Gas Act prevents the Commission from granting sanctity of contract, and that a degree of uncertainty will remain so long as Congress withholds action on sanctity of contract legislation. We continue to urge the necessity for sanctity of contract legislation, in the firm belief that Congressional action in this field will establish a reasonable level of prices consistent with adequate service to the consumer by encouraging development of required supplies and by avoiding uncertainty factors in producer pricing, thereby attracting capital at risk at a lower return than would otherwise prevail.

24. To those who have commented on our rulemaking to suggest that we exceed our authority in contemplating permanent certification of producer sales at firm rates not subject to refund or reduction in later area rate proceedings, we answer by our foregoing acknowledgment of the supremacy of Section 5 over our administrative regulations and determinations. We cannot bind a future Commission not to invoke the prospective operation of Section 5, nor do we attempt to do so. We do, however, announce our policy to examine the justness and reasonableness of proposed rates in Section 7 proceedings instituted under this Section, thus avoiding the uncertainty of reserving rate determinations for subsequent Section 4 or Section 5 action. To the extent that this Commission can grant certainty of rates, we do so. Congressional enactment of sanctity of contract legislation is essential to assure that contracts dedicating new supplies to interstate markets will not be abrogated by future commissions.

25. Since mid-1969, the Commission has attempted in several ways to obtain new supplies of gas for the interstate

market. One was the announcement in Paragraph 12 of its Statement of Policy in Docket No. R-389A issued July 17, 1970, 35 Fed. Reg. 11638, of its willingness to consider applications proposing to make sales at initial prices above area rate ceilings. Relatively few filings have been made under Paragraph 12, because certificates thereunder are conditioned to later area rate determinations and are therefore subject to the same uncertainties as have impeded domestic development in the past.

26. Another of our efforts to alleviate the gas shortage was the authorization for emergency purchases. Among other features, this program involved experimentation with the use of an expedited certification procedure which encompassed a determination of a lawful rate. In proceedings under Orders 402 (May 6, 1970, 43 FPC 707), 418 (December 10, 1970, 44 FPC 1574) and 431 (April 15, 1971, 45 FPC 570), all certification and rate issues are determined in one proceeding. Since the effective date of Order 431, we have issued 62 certificates at prices ranging from 26¢ to 40¢/Mcf. Approximately 500 Bcf of gas have been brought to the interstate market through this procedure. Neither the Order 431 procedure itself, nor any certificate issued under it has been the subject of legal attack, and we have been able to act upon certificate applications by final order issued, on the average, less than two months after the application was filed. The results of our experiment strongly indicate that producer rate regulation can be efficiently managed, in the public interest, by reaching certificate and rate issues in one proceeding, particularly if we use the abbreviated hearing process open to us under our statutes and rules.

27. The disadvantages to the Order 431 sales which have been made under the foregoing emergency regulations are two: First, on the whole no long-term dedications of reserves to pipeline companies have resulted from such sales. While the temporary sales have been of value in reducing pipeline and distributor curtailments in deliveries which otherwise would have resulted, the fact remains that the gas reserve life indices of the interstate pipeline have continued to decline. Second, Order 431 procedures are available only if the pipeline purchaser is in an emergency gas shortage situation.

28. These two disadvantages make Order 431 procedures an incomplete answer to the gas supply problem. Long-term dedications are essential to reliability and continuity of supply, and to pipeline financing. And secondly, we seek to prevent emergency conditions from developing, rather than responding after an emergency develops.

29. It should be made clear that the optional procedure is not intended to supersede the procedures currently being followed in the area rate proceedings. The area rate opinions have established rate levels for new and flowing gas sales that are currently being made, and parties may continue to operate under these procedures. This is an alternate procedure which is available if the producer is willing to forego certain benefits of area rate proceedings, in exchange for certainty of its certificated price, as determined at the certificate stage.

30. As the Supreme Court pointed out in *FPC* v. *Hope Natural Gas Co.*, 320 U.S. at 602, 64 S.Ct. at 28, and in *FPC* v. *Natural Gas Pipeline Co.*, 315 U.S. 575 at 586 (1942), the Commission must make "pragmatic adjustments" in rate procedures to stimulate the discovery and dedication of gas supplies to the interstate market.

31. By the procedures adopted herein, the Commission now seeks to stimulate the immediate introduction of new, long-term gas supplies into the interstate market by such a pragmatic adjustment. Thus it is proceeding under its certificate authority under Section 7 of the Act. It is unquestioned that the Commission is authorized to vary the initial terms and conditions of a contract for the sale of natural gas in interstate commerce by Section 7 of the Act. Section 7(e) of the Act authorizes the Commission "to attach to the issuance of the certificate * * * such reasonable terms and conditions as the public convenience and necessity may require." In *CATCO* (*supra*) the Supreme Court held that the "Act does not require a determination of just and reasonable rates in a §7 proceeding as it does in one under either §4 or §5." *Id.* at 390-1. However, neither the Act, or any decision, prohibits consideration of whether the rate is just and reasonable.

32. In determining the terms and conditions under which it will issue certificates under Section 7, the Commission need not fix such terms and conditions in each proceeding, but may promulgate those of a general nature under its rulemaking authority.

The Commission's rulemaking authority emanates from Section 16 of the Act, 15 U.S.C. §717o, which states in pertinent part that:

> The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this act. * * *[14]

33. The Supreme Court has explicitly held "that the statutory requirement for a hearing under §7 does not preclude the Commission from particularizing statutory standards through the rule-making process * * *." *F.P.C.* v. *Texaco*, 377 U.S. 33, 39 (1964). The Court held that the Commission may properly conclude that protection of the consumer interests will be best achieved if done at the threshhold of certification, citing legislative history which is particularly pertinent to the Commission's purpose in promulgating an optional procedure herein:

> * * * The bill when enacted will have the effect of giving the Commission an opportunity to scrutinize the financial set-up, *the adequacy of the gas reserves*, the feasibility and adequacy of the proposed services,

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[14]This section of the Act has been broadly construed by the Courts. *Mesa Petroleum Co.* v. *F.P.C.*, 441 F.2d 182 (CA5, 1971). In *Mesa*, the Fifth Circuit stated the Commission's agency discretion is at its zenith when enforcing its regulatory authority. *Id.* at 187. Compare *Niagara Mohawk Power Corp.* v. *F.P.C.*, 379 F.2d 153 (CADC, 1967). See also *F.P.C.* v. *Tennessee Gas Transmission Co.*, 371 U.S. 145, 150-5 (1962); *Superior Oil Co.* v. *F.P.C.*, 322 F.2d 601, 610 (CA9, 1963), Certiorari denied, 377 U.S. 922 (1964), rehearing denied, 377 U.S. 960.

and the characteristics of the rate structure in connection with the proposed construction or extension *at a time when such vital matters can readily be modified as the public interest may demand* * * * [emphasis supplied] (H.R. Rep. No. 1290, 77th Cong., 1st Sess., pp. 2-3, and see S. Rep. No. 948, 77th Cong., 2nd Sess., pp. 1-2).

34. Recently, the United States Court of Appeals for the District of Columbia Circuit stated that "many of the same regulatory objectives which can be attained through *ad hoc* proceedings under Section 4, 5 and 7 can also be attained through the issuance of general rules under Section 16." *City of Chicago* v. *F.P.C.*, 458 F.2d 731, 743 (CADC, No. 23740) decided December 2, 1971, cert. denied April 17, 1972.

35. In affirming *Permian* (*supra*) the Supreme Court noted (360 U.S., at 772):

> The Commission quite reasonably believed that the terms of any exceptional relief should be developed as its experience with area regulation lengthens. Moreover, area regulation of producer prices is avowedly still experimental in its terms and uncertain in its ultimate consequence; it is entirely possible that the Commission may later find that its area rate structure for the Permian Basin requires significant modification. We cannot now hold that, in these circumstances, the Commission's broad guarantees of special relief were inadequate or excessively imprecise. (Footnotes omitted).

36. The express purpose of this rulemaking is to provide an alternate procedural framework for producer rate regulation which will stimulate and accelerate domestic exploration and development of natural gas reserves. That some modification is

necessary and required under the present circumstances of a serious shortage of natural gas can no longer be denied. *Public Service Commission of the State of New York* v. *F.P.C.*, CADC, No. 71-1161, decided March 29, 1972; *Louisiana Power & Light Co.* v. *United Gas Pipe Line Co.*, CA5, No. 71-2550, decided January 14, 1972; *F.P.C.* v. *Louisiana Power & Light Co.*, ___ U.S. ___ (decided June 7, 1972); *Southern Louisiana Area Rate Cases* (*Austral Oil Co.* v. *F.P.C.*) 428 F.2d 407 (CA5, 1970); *Hunt Oil Co.* v. *F.P.C., supra.*

37. Of particular significance to the instant proceedings is the District of Columbia Circuit's recent opinion in *Public Service Commission for the State of New York* v. *F.P.C., supra.* In approving the Commission's rule, that a pipeline's advance payments to producers for gas to be delivered at a future date may be included in the pipeline's rate base, the Court stated (Slip op. at 12):

> It appears to us that what the FPC is attempting to do in this area is to reach an accommodation of conflicting interests, through experimentation, that will result in the proper alleviation of the gas shortage. In doing so, we think that the FPC is making policy decisions of the type it was created to make, and we are reluctant to disturb them. In this very difficult area of rate-making, when it is uncertain what will be the ultimate agency determination, and when it is as yet unknown what will be the results and ramifications of the experimental policies adopted by the agency, we feel that the FPC has demonstrated, as adequately as can be expected under the circumstances, the basis for its actions, and we may thus defer to the expertise of the FPC in this matter. (Footnotes ommitted).

38. Finally, as the Supreme Court said in *Permian* (390 U.S., at 790):

> We must reiterate that the breadth and complexity of the Commission's responsibilities demand that it be

given every reasonable opportunity to formulate methods of regulation appropriate for the solution of its intensely practical difficulties.

39. Our action in establishing a procedural framework for Commission action in the field of certificate and rate regulation is taken under our general power of rulemaking as bestowed by §553 of the Administrative Procedure Act and Section 16 of the Natural Gas Act. Our general statement of policy, and rules of agency procedure and practice here adopted, are not subject to requirements of notice and hearing. §553(b). In recognition of the significance of the matters here dealt with, however, we sought public comment, thereby providing a hearing, within the meaning of §553(c) of the Administrative Procedure Act.

40. Certain comments filed in opposition to this rulemaking suggest that the Commission is abdicating its ratemaking responsibility by permitting producers and purchasers to set rates by private bargain. Such is not the case. Our actions in individual proceedings arising under these new procedures will answer this objection. We will be, as we should be, judged on the proper discharge of our duties on the record made before us in each case.

41. We are firm in our conviction that we must act in an attempt to alleviate the nation's shortage of natural gas supply, and we believe our action herein to be a reasonable and appropriate measure toward that end. We are mindful that any rate or rates we may find proper under the alternative method of certification we provide for herein will be binding subject only to subsequent findings and determinations that may be made under Section 5(a) of the Act, *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332, 344. Contracts approved unconditionally pursuant to the alternative procedure will be free from any later attempt to impose a refund obligation. We believe that such an assurance is an alternative that must be made available, subject to the conditions we attach thereto.

ANALYSIS OF RULE

42. As we stated in the Notice, issued April 6, 1972, the rule we adopt hereby will not supersede the procedures that have been promulgated in our various rate opinion and orders nor supplant the procedures set forth in Docket Nos. R-389 and R-389A, but will supplement the procedures set forth in Order No. 431, Docket No. R-418, issued April 21, 1971.

43. Further, the optional procedure will not affect any certificate proceeding which has been completed or is now pending under procedures set forth in the various rate opinions and orders, or under Order Nos. 402, 402A, 431 or our Regulations 157.22 and 157.29.

COMMENTS AND SUGGESTIONS

44. We shall not attempt to enumerate or discuss each comment received or suggestion made about the proposed new Section 2.75 of the Commission's General Policy and Interpretations, but shall set forth the comments generally, and our conclusions as to them. Our discussion of the lawfulness of our action herein dispenses with any need of discussing the comments made in regard to paragraph "a" of the new Section 2.75.

45. *Paragraph 10.b. (1)* – The question asked here concerned clarification as to whether acreage dedicated to an existing contract under an amendment dated on or after April 6, 1972, would be eligible for certification under the optional procedure. Because of the questions asked, it has become apparent that there is some misunderstanding of our intent to apply the optional procedure to supplies of gas not available to the interstate market prior to April 6, 1972. We seek new supplies of gas, whether such new supplies come from new acreage dedications, or from newly drilled wells, or by diversion from other uses. Accordingly, we clarify paragraph 10b.(1) to make it read:

> A contract covering the sale of natural gas in interstate commerce has been executed for gas produced from a well or wells commenced after April 6, 1972; *or* a contract covering the sale of natural gas in interstate commerce has been executed for gas not pre-

viously sold in interstate commerce except under the provisions of Orders 402, 418 or 431 issued May 6, and December 10, 1970; April 15, 1971, respectively.

This modification will encourage full development of acreage previously dedicated to the interstate market, as well as encouraging exploration for new reserves. We conclude that expansion of incentives to include all wells commenced after April 6, 1972, the date of our original notice, will greatly encourage additional drilling; to the extent that we bring about additional drilling and production we are securing for the consumer reliable gas supplies not previously deliverable.

In recognizing that prior Commission procedures and policies, which defined the dichotomy between "new" gas and "old" gas on the basis of contract date, have failed to achieve full development of dedicated acreage, we do not intend, nor shall this statement be construed as a release of any dedicated acreage from commitment to the interstate market. Applications tendered under this Section covering gas produced from new wells on old acreage shall be treated as an application for certificate amendment and a Section 4 rate increase filing.

46. *Paragraph 10.b. (2).* — The comments received requested clarification of the term "All Parties." Some requested that "Signatory parties" be substituted for the words "all parties." However, to limit the obligation to parties who sign the sales contract would establish a loophole where working interest owners by merely declining to sign the sales contract, under which their gas is sold, would be able to obtain all the advantages of the optional procedure for the particular sale without giving up any of the advantages the area rate ceilings would afford them under their existing contracts.

47. Therefore, we shall not restrict the requirement that all parties to the contract, except for parties sharing a royalty interest only, agree. The following revised paragraph shall be adopted:

All parties whose gas is to be sold under the terms and conditions of such contract, except for

the royalty interest therein, must agree to the submission of the same for certification in accord with the provision of this Section.

48. *Paragraph 10.b. (3).* – In regard to this provision, all of the comments received opposed the 12-year deliverability life requirement because it is alleged the requirement too burdensome and unnecessary. We agree that the 12-year deliverability requirement should be deleted and shall adopt the following language:

The purchaser under such a contract is a jurisdictional pipeline.

49. *Paragraph 10.b. (4).* – Of the comments received pertaining to this paragraph, the majority requested clarification of the phrase "all obligations." We believe clarification is necessary, and we shall adopt the following language:

The seller under such contract establishes that he has discharged, or is prepared by an acceptable plan or program to discharge, refund obligations prescribed by prior orders or opinions of this Commission. It is provided, however, that any such seller may make the showing here required without prejudice to his claim in any case now pending on judicial review that such obligations were unlawfully imposed by the Commission.

50. Some of the respondents asked if the optional procedure is available to affiliate or subsidiary off-system and on-system sales. We have no intent to exclude such sales. However, we should point out that such sales will be examined by the Commission to assure that the proposed rates are reasonable and in the public interest.

51. Some question was raised as to whether small producers are eligible for certification under the optional procedure? Here again we had no intent to exclude small producers and we see no reason to do so.

52. *Paragraph 10.b. (5).* – The major problem the parties raised with this paragraph is that clarification is neces-

sary. We agree. The following language will, we believe, clarify the paragraph and remain consistent with our amended wording of paragraph 10.b.(1).

> The gas covered by the contract offered for certification is produced from a well or wells commenced on or after April 6, 1972; or the gas offered for certification has not been previously sold in the interstate market (unless abandonment has been previously granted or a sale was made under Orders 402, 418 or 431), nor has an application been previously filed with the Commission for certification of the sale of such gas, except for an emergency sale under Orders 402, 418 or 431.

53. Other questions were raised in regard to paragraph 10.b. First, will the reserves dedicated under the optional procedure count toward discharge of refund obligations under area rate opinions providing for the same? The answer to that question is no. Provisions for the discharge of refund obligations are components of area rate decisions which are still pending on appeal.

54. Second, would gas flowing under warranty contracts qualify hereunder? The succinct answer here is: No. Opening the optional procedure to warranty gas would necessarily involve the Commission in modification of the terms of the warranty.

55. *Paragraph 10.c.* – Two basic points were raised in reference to this paragraph. First, how can the seller certify to conditions relating to the purchaser? The answer is that the seller does not have to certify to any conditions relating to the purchaser. Such certification is the sole responsibility of the purchaser.

56. Second, replies requested clarification of the term "all parties" in the second sentence. The words "all parties" in the second sentence will be qualified by the inclusion of the phase "except those having a royalty interest only", to conform with the change heretofore noted in paragraph 10.b.(2). Additionally to assist in the clarification of the first

question, the following language for the second sentence will be adopted.

> . . . . *Each party* to the application shall certify to his portion that all parties to the contract desire certification . . .

57. *Paragraph 10.d.* – The parties asked here (a) if individual company rate cases, all Commission actions, and orders be included under this provision; and (b) would rates established under the optional procedure be recognized by the Commission as a basis for triggering price escalation clauses?

58. In answer to the above questions, and to clarify the provision, we shall adopt the following language:

> A certificate of public convenience and necessity issued and accepted under this Section shall not be subject to change by determinations or orders whether heretofore made or hereafter to be made in producer or pipeline rate proceedings initiated under Section 4 of the Act, and orders issued hereunder shall not constitute establishment of an area rate; provided, however, that nothing herein shall limit the applicability of Section 5 of the Natural Gas Act. Nothing done hereunder shall be recognized by the Commission as triggering any existing contract escalation clauses.

59. *Paragraph 10.e.* – The only major substantive question raised by the parties here was whether short-term contracts would be accepted under this rulemaking. We see no reason to provide that only long-term contracts should be permitted under the optional procedure.

60. *Paragraph 10.f.* – Many comments were received relating to this paragraph requesting clarification of the phrase: "indefinite pricing clauses." Many specifically asked if area rate, Btu, tax reimbursement, compression and dehydration, and redetermination and renegotiation clauses would be allowed.

61. We have determined that so-called "area rate clauses" should not be allowed because area ceiling rates might then become a floor for all future contracts to be certificated under the optional procedure. Further, redetermination and renegotiation clauses will not be permitted because rates under the optional procedure would, perforce, be continually changing. Other types of clauses should be allowed, and, therefore, the following language is adopted.

> No contract shall be accepted for filing if it includes any type of indefinite pricing clause except Btu price adjustment clauses, clauses to reflect changes in state production taxes, and clauses allowing for the recovery of compression and dehydration charges. Indefinite pricing clauses shall include, but are not limited to "area rate or FPC clauses", a "price redetermination or renegotiation clause" or a "special escalation clause."

62. *Paragraph 10.g.* – Certain comments were based on a request that some clarification of the type and nature of factual support was necessary in light of paragraph 2 through 7 of the rulemaking procedure.

63. We believe that each contract filed under the alternative procedures must be considered on the merits of the terms and provisions within each contract. There certainly must be some evidentiary basis proffered by the seller-applicant upon which we can judge whether the contract rate is just and reasonable. We will, absent a showing of special circumstance, accept as conclusive the cost findings embodied in our area rate decisions, as such may be supplemented from time to time by appropriate Commission order.

64. *Paragraph 10.h.* – Most of the comments in regard to this section were made as if Paragraph 10.i. were not proposed. We belive that most of the objections would not have occurred if paragraph 10.i. had been read closely. However, even if the information required in this paragraph is not on file with the Commission so that it may be submitted by incorporation, we believe the data will be necessary to properly judge the merits of the contract, and to make a

determination of the propriety of the contract rate. Therefore, we shall make no change in this paragraph.

65. *Paragraph 10.k.* – One party filed a comment stating that the standards were not spelled out as to when the Commission would hold a formal hearing. It is impossible at this time to set such specific standards, or to foresee when possible circumstances surrounding future filings may require a formal hearing. Therefore no change in this provision will be made.

66. *Paragraph 10.l.* – One comment was filed in regard to this paragraph asking whether filing under the alternative procedure imputes any implied waiver by the applicants thereunder. Where the waiver of any right may be provided for herein, it is an express waiver. To eliminate any doubt in the rule itself, however, we shall amend this provision to read:

> 1. A final order of this Commission, issuing a certificate as applied for, or issuing a conditioned certificate acceptable to the applicants, shall constitute a final determination that the rates, charges and services therein specified are just, reasonable and required by the present and future public convenience and necessity.

67. *Paragraph 10.m.(2)* – Virtually all the comments received on this waiver of contingent escalations were firmly opposed and sought elimination of this condition. We are impelled to retain this requirement, with one modification. We strike the phrase "or hereafter issued", thus limiting the waiver to contingent escalations provided for in Opinions 595 (Texas Gulf Coast) and 598 (Southern Louisiana). Thus, only producers with flowing gas production in Southern Louisiana or Texas Gulf are affected by paragraph 10.m.(2).

68. Our reasons for imposing the conditions are twofold: First, contingent escalations are a component of area rates. Flowing and new gas prices were established in Southern Louisiana and Texas Gulf Coast with due regard to the incentives which these escalations provided. Both Southern Louisiana and Texas Gulf Coast (our only opinions which

establish contingent escalations) are on appeal.

69. Secondly, but of equal importance, we offer the procedures herein adopted as an optional procedure to function in parallel with area rate regulation. Were we to cast aside the waiver required in paragraph 10.m.(2), consumers would be injured, and producers in Southern Louisiana and in Texas Gulf Coast (the only producers affected by this waiver) would be afforded an unfair position over producers in all other areas. Such unacceptable results would occur because applications under this Section would operate, in the absence of paragraph 10.m.(2), not only on new gas sales but would also operate to escalate old gas prices as well.

70. By retaining paragraph 10.m.(2) we require, in effect, an election by producers with flowing gas in Southern Louisiana and Texas Gulf Coast; they must choose whether contingent escalations on flowing gas provide a sufficient incentive to seek and sell new gas to the interstate market, at area rates, or whether a greater degree of market freedom in the pricing of new supplies offsets the benefit of contingent escalation of flowing gas prices. Requiring this election protects the consumer, as we must, from escalation of both flowing and new gas rates.

71. We cannot, in equity, permit a producer with flowing gas in Southern Louisiana or Texas Gulf to achieve higher-than-area rate prices for its own new deliveries and still receive price escalations on its flowing gas through the efforts of other producers who elect to remain on area rate pricing for new dedications.

72. The election here required is to be made on a company-by-company basis, with each company's decision to waive Southern Louisiana or Texas Gulf contingent escalations evidenced by the company's acceptance of its first permanent certificate issued under Section 2.75.

73. We emphasize that paragraph 10.m.(2) operates on an area-by-area basis. For example, a producer with flowing gas in Southern Louisiana can use the optional procedures for new gas from any other area without waiving his Southern

Louisiana contingent escalations. Accordingly, while we recognize that paragraph 10.m.(2) may impose a restraint on some producers, under some circumstances, the restraint is necessary and, we believe, required by the public interest.

74. Reserves dedicated hereunder will be allowed to count toward the contingent escalation of flowing gas rates of all other producers operating in the area, if such reserves otherwise qualify for escalation credit under the express terms of Opinions 595 and 598. This is because escalation of flowing gas rates are an industry endeavor in each area where contingent escalations are provided for and is not the function of the discharge of an obligation of any one particular company.

75. We emphasize also that with the exception of the one-time election required by paragraph 10.m.(2), the option between area rate pricing and certification under Section 2.75 procedures here provided lies with the producers on a contract-by-contract basis.

76. *Paragraph 10.n.* – The comments received regarding this paragraph concerned the apparent inconsistency regarding notice to the Commission provided for in the first two sentences. The comments are well-taken. The words: "after notice to the Commission" will be stricken from the first sentence, and the second sentence will be changed to read:

> Notice of commencement of deliveries shall be given to the Commission within ten days after deliveries first commence, and shall include all pertinent information concerning the deliveries.

77. *Paragraph 10.o.*—Many comments filed in regard to this provision objected to the area ceiling rate limitation for the period of six months after deliveries are commenced in accordance with Paragraph 10.n. Such a limitation is, however a reasonable one, since predicated on the assumption that the Commission will have acted by final order within that period of time. The parties may, after the six-month period and upon the filing of a notice of change in rate by the seller, continue the service at the rates specified in the contract,

without refund obligation. Six months is clearly an adequate period for preliminary Staff analysis and review of applications tendered under the optional procedure. Accordingly, by action to deny or condition certificates prior to the expiration of the six-month period, we can protect against the impact of a nonrefundable rate which is not just and reasonable. To clarify that which has appeared to concern many of those responding to this provision, we shall provide that it will be changed to read:

> . . . (If the Commission has not made its final order), the seller upon the filing of a notice of change in rate pursuant to Section 154.94 of the Commission's Regulations shall be entitled to receive without refund obligation and the purchaser shall be entitled to pay, the rates specified in the contract. . .

78. *Paragraph 11.*—A comment was received suggesting that in view of the Commission's intent, stated in the last sentence of the paragraph, to encourage long term, large volume dedications of new supplies of natural gas, the Commission should not accept contracts for less than a minimum term of twenty years. Although it is true that the desired goal of the optional procedure is to obtain long term commitments of gas, we do not believe that contracts for less than twenty years, or life of lease contracts, should be barred. Our consideration of individual applications will reflect due concern for the desirability of long-term dedications.

GENERAL COMMENTS

79. As we have noted above (paragraph 5) natural gas is the cleanest burning, and insofar as is known today, the least polluting of all the fossil fuels. This, of course, is one of the reasons for its present enlarged demand and desirability as a fuel. Indeed, in some of our metropolitan areas, "clean-air" regulations and restrictions have made natural gas not only desirable, but almost a necessity for some commercial and industrial users. The Environmental Protection Agency (EPA) filed its response in this proceeding, stating that in its opinion

the optional procedure we provide for herein will be a major step towards elimination of the gas shortage and the nation's air pollution problem through the addition of new gas reserves.

80. These rules herein adopted are inherently procedural, providing an optional method by which to obtain certification; accordingly, our rulemaking involves no direct impact on the environment (such as construction of facilities would) nor does it indirectly affect the environment through the setting of rates. Questions of environmental concern may be proper at the time of certification, whatever the procedure employed for such certification, but such questions are of no relevance to the establishment of procedural rules.

81. EPA suggests that the pipelines obtaining these additional gas reserves should file volumetric information on the specific end uses to which the gas will be put. This information would be used to insure that the gas would be used to reduce air pollution. EPA recognizes the possiblity that it may become necessary for this Commission to allocate the end use of gas and suggests that the data it proposes could be useful to the Commission in such a program. However, most, if not all the gas obtained through the optional procedure will go to supplying existing customers. At this time, we do not foresee the new and expanded services envisioned by EPA.

The Commission further finds:

(1) The notice and opportunity to participate in this proceeding with respect to the matters presently before the Commission through the submission, in writing, of data, views, comments and suggestions in the manner as described above are consistent and in accordance with all procedural requirements therefor as prescribed in Section 553, Title 5 of the United States Code. Since the amendment prescribed here does not prescribe an added duty or restriction, compliance with the effective date requirements of 5 U.S.C. 553(d) is unnecessary.

(2) The amendment of Part 2, General Rules of Practice and Procedure, General Policy and Interpretations, Subchapter

A, Chapter 1, Title 18 of the Code of Federal Regulations, Section 2.75 Optional Procedure for Certificating New Producer Sales of Natural Gas, as herein prescribed, is necessary and appropriate for the administration of the Natural Gas Act.

(3) Since the modifications to the amendments prescribed herein which were not included in the notice of this proceeding are of a minor nature, and are consistent with the prime purpose of the proposed rulemaking herein, further notice thereof is unnecessary.

The Commission, acting pursuant to the provisions of the Natural Gas Act, as amended, particularly sections 4, 5, 7 and 16 thereof (52 Stat. 822, 823, 824, 825 and 830; 56 Stat. 83, 84; 61 Stat. 459; 76 Stat. 72, 15 U.S.C. 717c, 717d, 717f, and 717o) *orders:*

(A) part 2 of the Commission's General Rules of Practice and Procedure, General Policy and Interpretations, Subchapter A, Chapter I, Title 18 of the Code of Federal Regulations is amended by adding new Section 2.75, as follows:

2.75 Optional Procedure for Certificating New Producer Sales of Natural Gas

a. Notwithstanding any other provisions in the General Rules of Practice and Procedure of the Federal Power Commission, or the Regulations Under the Natural Gas Act of the Federal Power Commission, applications for certification of future sales of natural gas produced within the United States may, at the option of the signatory parties to sales contracts, be submitted in accordance with the provisions of this Section. The the extent that any Federal Power Commission General Rules of Practice and Procedure or Regulations under the Natural Gas Act are inconsistent herewith, the same are hereby amended to permit the optional procedure herein set forth.

b. The provisions of this Section shall be available if each of the following conditions exists:

1. A contract covering the sale of natural gas in interstate commerce has been executed for gas produced from a well or wells commenced after April 6, 1972; *or* a contract covering the sale of natural gas in interstate commerce has been executed for gas not previously sold in interstate commerce except under the provisions of Orders 402, 418 or 431 issued May 6, and December 10, 1970; April 15, 1971, respectively.

2. All parties whose gas is to be sold under the terms and conditions of such contract, except for the royalty interest therein, must agree to the submission of the same for certification in accord with the provision of this Section.

3. The purchaser under such contract is a jurisdictional pipeline.

4. The seller under such contract establishes that he has discharged, or is prepared by plan or program to discharge, refund obligations prescribed by prior orders or opinions of this Commission. It is provided, however, that any such seller may make the showing here required without prejudice to his claim in any case now pending on judicial review that such obligations were unlawfully imposed by the Commission.

5. The gas covered by the contract offered for certification is produced from a well or wells commenced on or After April 6, 1972; or the gas offered for certification has not been previously sold in the interstate market (unless abandonment has been previously granted or a sale was made under Orders 402, 418 or 431), nor has an application been previously filed with the Commission for certification of the sale of such gas, except for an emergency sale under Orders 402, 418 or 431.

c. If all of foregoing conditions precedent exist, the parties to the contract may tender the same to the Commission and request the issuance of a certificate of public convenience and necessity to the seller for sales of natural gas thereunder. Each party to the application shall certify to his portion that all parties to the contract, except those having a royalty interest only, desire certification in accordance with the terms and provisions of this Section, that the seller expressly agrees to the waivers and elections hereinafter provided for in subsections m and n of this Section, and that all conditions precedent as set forth in sub-section b of this Section are met.

d. A certificate of public convenience and necessity issued and accepted under this Section shall not be subject to change by determinations or orders whether heretofore made or hereafter to be made in producer or pipeline rate proceedings initiated under Section 4 of the Act, and orders issued hereunder shall not constitute establishment of an area rate; provided, however, that nothing herein shall limit the applicability of Section 5 of the Natural Gas Act. Nothing done hereunder shall be recognized by the Commission as triggering any existing contract escalation clauses.

e. Applications presented hereunder will be considered for permanent certification, either with or without pre-granted abandonment, notwithstanding that the contract rate may be in excess of an area ceiling rate established in a prior opinion or order of this Commission.

f. No contract shall be accepted for filing if it includes any type of indefinite pricing clause except Btu price adjustment clauses, clauses to reflect changes in state production taxes, and clauses allowing for the recovery of compression and dehydration charges. Indefinite pricing clauses shall include,

but are not limited to "area rate or FPC clauses", a "price redetermination or renegotiation clause" or a "special escalation clause."

g. A seller-applicant under this Section shall state the ground for claiming that the present or future public convenience and necessity require issuance of a certificate on the terms proposed in the application, and shall provide factual support for such claims. The application shall contain a contract summary as prescribed in Sec. 250.5 of our Regulations Under the Natural Gas Act.

h. The purchaser under a contract filed under this Section shall certify that the present or future public convenience and necessity require issuance of a certificate to the seller, and shall provide information in support of such certification with respect to the pruchaser's (1) system-wide supply, (2) present and estimated 3-year peak day and average day demands, (3) present and estimated 3-year requirements of customers on its system, (4) deliverability life, (5) implementation, if any of curtailment plans, (6) emergency purchases of gas under Order 431, or 157.22 or 157.29 of these Regulations, and (7) purchases of LNG or attachment of other supplemental supplies.

i. The information required by sub-section g. and h. may be submitted by cross-reference and incorporation of information already on file with the Commission.

j. Applications requesting issuance of certificates of public convenience and necessity as authorized in this Section shall be processed in accordance with the procedural requirements, including those relating to notice, intervention and hearing, set out in Part 157 of the Commission's Regulations Under the Natural Gas Act.

k. Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a statutory hearing will be held before the Commission without futther notice on all applications for certificates under this Section in which no petition to intervene in opposition is filed within the time required, if the Commission on its own review of the matter believes that a grant of a certificate is required by the public convenience and necessity. Where the Commission believes that a formal hearing is required notice of such hearing will be duly given.

l. A final order of this Commission, issuing a certificate as applied for, or issuing a conditioned certificate acceptable to the applicants, shall constitute a final determination that the rates, charges and services therein specified are just, reasonable and required by the present and future public convenience and necessity.

m. By acceptance of a certificate issued hereunder, the seller-applicant unconditionally agrees to (1) waive all rights to seek future rate increases under Section 4 of the Natural Gas Act with respect to the contract submitted, other than price escalations, if any, as certificated by the Commission; and (2) waive all rights to contingent adjustment of flowing gas rates as provided by the Commission in area rate decisions heretofore decided, for flowing gas which the seller-applicant produces in the same geographical pricing area as the pricing area of the production covered by the application made under this Section.

n. Upon the filing of an application under this Section, deliveries pursuant to the provisions of the tendered contract may be commenced, pending review of such application by the Commission.

Notice of commencement of deliveries shall be given to the Commission within ten days after deliveries first commence, and shall include all pertinent information concerning the deliveries. Any such deliveries so commenced may be terminated (1) if such contract for any reason shall terminate or be terminated prior to the issuance by the Commission of a final order upon review of such application, or (2) upon the issuance of a certificate containing conditions unacceptable to the party adversely affected. If the Commission by final order shall deny such application, or if the party or parties to the contract adversely affected shall not accept the terms and conditions prescribed by the Commission, deliveries thereunder shall be terminated. Within thirty days after termination of deliveries, the seller shall notify the Commission of such termination, and shall report the date of termination, volumes delivered, and revenues received.

o. If the parties elect to commence deliveries as set forth in subsection n., such deliveries will be made at rates no higher than the prevailing area ceiling rate and shall so continue for six months unless the Commission has made its final orders on the application at an earlier date; at the end of such six-month period (if the Commission has not made its final order), the seller upon the filing of a notice of change in rate pursuant to Section 154.94 of the Commission's Regulations shall be entitled to receive without refund obligations and the purchaser shall be entitled to pay, the rates specified in the contract, and such contract rates shall continue as the effective rates until the Commission enters its final order on the certificate application.

(B) The amendment provided for herein shall be effective as of the date of issuance of this order.

(C) The Secretary of the Commission shall cause prompt publication of this order to be made in the Federal Register.

By the Commission.

(S E A L)

Mary B. Kidd,
Acting Secretary

DOCKET NO. R-441

RESPONDENTS TO OPTIONAL PROCEDURE

Independent Producers

Amoco Production Company
Atlantic Richfield Company
Aztec Oil and Gas Company
Perry R. Bass
California Company, Division of Chevron
Cities Service Oil Company
Estate of E. Cockrell Jr.
Continental Oil Company
Exchange Oil and Gas Corporation
James Forgotson, Sr.
General American Oil Company of Texas
GHK Corporation
Gulf Oil Corporation
Humble Oil and Refining Company
Inexco Oil Company
Kansas Natural Gas, Inc.
Kerr-McGee Corporation
Lake Washington, Inc., U.S. Oil of Louisiana, Inc.
Marathon Oil Company
Mesa Petroleum Company
Mobil Oil Corporation
Phillips Petroleum Company
Joint Comments & Suggestions of Twelve Company Producer Group
Shell Oil Company
Sun Oil Company
Superior Oil Company
Tenneco Oil Company
Texaco, Inc.
Texas Pacific Oil Company, Inc.
Union Drilling, Inc.
Union Oil of California

Pipeline Companies and Pipeline Groups

American Natural Gas System
Colorado Interstate Gas Company
Columbia Gas System Service Corporation

Consolidated Gas Supply Corporation
El Paso Natural Gas Company
Iroquois Gas Corporation
Natural Gas Pipeline Company of America, (Peoples Gas Light & Coke and North Shore Gas Company)
Northern Natural Gas Company
Pacific Gas Transmission Company
Panhandle Eastern Pipeline Company
Southern Natural Gas Company
Southern Union Gas Company
Tennessee Gas Pipeline Company
Transcontinental Gas Pipeline Corporation
United Gas Pipeline Company
United Natural Gas Company
Pennsylvania Gas Company

Distribution Co's and Distribution Groups

Associated Gas Distributors (AGD)
Boston Gas Company, et al. (16 Co's.)
California Distributor Group
Central Illinois Public Service Company
Consumers Power Company
Illinois Power Company
Long Island Lighting Company
Northern Illinois Gas Company

State Commission's, Cities and Municipalities

Public Service Commission of Missouri
State of California and PUC of California
City of Chicago
Citizens Gas and Coke Utility (City of Indianapolis)
State of Indiana, Public Service Commission
State of Kansas Corporation Commission
Memphis Light, Gas and Water Division (City of Memphis)
State of New Mexico
Public Service Commission of New York
North Carolina Utilities Commission
Salt River Project Agricultural Improvement & Power District

Congressional and Governmental Agencies

Bill Archer, Congressman, Texas
Lloyd M. Bentsen, Senator, Texas

Department of Commerce
Congress of the United States, Joint Economic Committee
Concerned Congressmen (21 Members)

Congressman John E. Moss
Congressman John D. Dingell
Congressman Ogden R. Reid
Congresswoman Bella S. Abzug
Congressman Joseph P. Addabbo
Congressman Herman Badillo
Congressman Jonathan B. Bingham
Congressman Silvio O. Conte
Congressman Jerome R. Waldie
Congressman Charles C. Diggs, Jr.
Congressman Thaddeus J. Dulski
Congressman Thaddeus J. Dulski
Congressman William D. Ford
Congressman Seymour Halpern
Congressman Robert L. Leggett
Congressman Thomas M. Rees
Congressman Benjamin S. Rosenthal
Congressman Charles A. Vanik
Congressman Phillip Burton
Congressman Bertram L. Podell
Congressman Lionel Van Deerlin
Congressman George E. Danielson
Marlow W. Cook, Senator, Kentucky
William P. Curlin, Jr., Congressman, Kentucky
Environmental Protection Agency
Philip A. Hart, Senator, Michigan
Department of Interior
Walter Jones, Congressman, North Carolina
Warren G. Magnuson, Senator, Washington
Wilmer D. Mizell, Congressman, North Carolina
Neal Smith, Iowa, and Silvio O. Conte, Massachusetts, Congressmen

Trade and Consumer Groups

American Public Gas Association, American Public Power Association and Consumer Federation of America
Consumers Assembly of Greater New York
Gas Appliance Manufacturers Association
Independent Natural Gas Association of America (INGAA)
Independent Petroleum Association of America (IPAA)

Institute for Public Interest Representation (S.O.U.P.)
Kansas Municipal Utilities, Inc.
Public Interest Research Group

Other

Hamilton Treadway
Anthony R. Martin–Trigona (P.O.W.E.R.)
Midrex Division (Midland-Ross Corporation)
Natural Resources Defense Council, Inc. (Environmental Group)